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**FISCAL IMPACT STATEMENT**

**LS 7366**

**BILL NUMBER:** HB 1264

**NOTE PREPARED:** Feb 26, 2004

**BILL AMENDED:** Feb 25, 2004

**SUBJECT:** Interlock Ignition Devices.

**FIRST AUTHOR:** Rep. Dvorak

**FIRST SPONSOR:** Sen. Wyss

**BILL STATUS:** As Passed Senate

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☒ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill makes tampering with an ignition interlock device a Class B misdemeanor under certain circumstances. The bill requires a court in a county having an ignition interlock program to prohibit a repeat OWI offender from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device. The bill also provides that a court may order installation of an ignition interlock device as: (1) a condition of certain deferred prosecution programs; (2) an alternative to an administrative driver's license suspension; and (3) a condition of participation in a post-conviction alcohol abuse deterrent program. It also requires a court that orders installation of an ignition interlock device to notify the Bureau of Motor Vehicles (BMV), and requires the BMV to record this requirement in the person's driving record.

The bill makes the offense of operating a motor vehicle while intoxicated as a Class A misdemeanor a Class D felony if: (1) at least one passenger is less than 18 years of age; and (2) the driver is at least 21 years of age. It also prevents persons who have been convicted of certain offenses involving operating a motor vehicle while intoxicated from obtaining a probationary license. The bill increases or establishes mandatory jail time for persons convicted of committing certain offenses involving operating a motor vehicle while intoxicated. The bill also provides that certain persons convicted of operating while intoxicated (OWI) must receive assessments for alcohol and drug abuse. The bill requires a person convicted of OWI causing death to receive a nonsuspendible sentence if the person had a controlled substance in the blood, or a BAC greater than 0.15%.

The bill specifies that a court is required to suspend the driver's license or vehicle registration of a person convicted of committing certain controlled substance offenses only if the court finds that a vehicle was used in the commission of the offense.

The bill also provides that certain out-of-state convictions may be used as a basis to enhance the penalty for OWI causing serious bodily injury and OWI causing death.

**Effective Date:** July 1, 2004.

**Explanation of State Expenditures:** *Class A Misdemeanor Increased to Class D Felony* – Under current law, a driver over the age of 21 who operates a vehicle while intoxicated with a minor in the vehicle commits a Class A misdemeanor. This bill would make this offense a Class D felony.

The bill also provides that out-of-state convictions for operating while intoxicated may be used as a basis to enhance a Class D felony for OWI to a Class C felony. This could increase the number of convictions resulting in a Class C felony.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class D felony is punishable by a prison term ranging between six months and three years or reduction to Class A misdemeanor. A Class C felony is punishable by a prison term ranging between two and eight years. The period of incarceration will depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$26,825 in FY 2002. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months. The court would be able to suspend only the sentence in excess of the six-month minimum sentence for repeat offenders convicted of the Class D felony. The average length of stay for Class C felony offenders is 1.9 years.

*Mandatory Suspension of Licenses* – This bill increases the suspension length of OWI-related offenses as shown below.

Offense	Length of Time a License May Be Suspended	
	<u>Current Law</u>	<u>Proposed</u>
OWI within past 5 years	One to two years or minimum one year suspension and one year probationary license with interlock device	One to two years
OWI at 0.15 blood alcohol content for first time	90 days to two years	180 days to two years
OWI or dangerous driving when driver is older than 21 and passenger younger than 18	90 days to two years	One to two years
Two violations under habitual traffic violator statute causing death	10 years	Lifetime

*Serving the Mandatory Minimum Sentence for OWI While Causing Death* – Under current law, a court may suspend any portion of the sentence a person convicted of OWI and causing a person's death if the crime was committed more than seven years after the person has been discharged from probation, imprisonment, or parole, whichever is later. If the crime was committed within this seven-year period, then the person would be required to be imprisoned for a minimum two years before being eligible to be released. ***As proposed, any person with or without a prior conviction who causes a death while OWI would be required to be imprisoned for a minimum of two years.***

DOC reports the number of offenders committed to DOC for this offense between FY 1996 and 2003 as the following.

1996	1997	1998	1999	2000	2001	2002	2003
28	20	17	26	23	33	31	31

Increasing the minimum amount of time that an offender would be required to be imprisoned would increase the costs for the Department of Correction.

*License Suspensions for Using a Motor Vehicle in the Commission of Certain Offenses:* If a person is convicted of any of the following offenses and the court finds that a motor vehicle was used to commit the offense, then the court shall suspend the person's license and motor vehicle registration for between six months and two years. The offenses affected by this provision include:

- dealing in cocaine or a narcotic drug; a schedule I, II, III, IV or V controlled substance; a counterfeit substance; or marijuana, hash oil or hashish.
- possession of cocaine or narcotic drug, controlled substance, marijuana, hash oil or hashish.

Depending on the findings of the court, this provision could increase the number of license suspensions.

**Explanation of State Revenues:** *Penalty Provisions:* The bill increases the penalty for a person who knowingly or intentionally tampers with an ignition interlock device from a Class B infraction to a Class B misdemeanor. This bill potentially increases revenue to the Common School Fund, but could reduce revenue that is deposited in the state General Fund. Currently, the maximum judgment for a Class B infraction is \$1,000, which is deposited into the state General Fund. The maximum fine for a Class A and a Class B misdemeanor is \$1,000, and the maximum fine for a Class C and Class D felony is \$10,000. Fines for misdemeanors and felonies are deposited into the Common School Fund. Besides the issuance of fines, the sentencing court may assess a court fee if a guilty verdict is entered. The court fee for an infraction is \$70, while the court fees for misdemeanors and felonies are \$120. The state receives 70% of the court fee that is assessed when a guilty verdict is entered and the fee is collected in a court of record and 55% if a case is filed in a city or town court. If a criminal action, infraction, or ordinance violation involves a traffic violation, including this proposed offense, a highway work zone fee of either \$0.50 or \$25.50 is assessed.

*Court-ordered Installation of an Ignition Interlock Device:* Presently, it is unclear if this provision will jeopardize federal National Highway Traffic Safety Administration (NHTSA) funds. According to the Regional Administrator of NHTSA, there is the potential of a loss of approximately \$13.8 M in Section 164 Repeat Offender Transfer funds, however this is pending a legal review by NHTSA. Further, according to the Director of the Drug Free/Impaired/Dangerous Driving Division of the Indiana Criminal Justice Institute, this provision removes both the "hard 30-day sentence for refusal of a drug or alcohol test and the "hard 90-day sentence for failure of a drug or alcohol test, thereby triggering the potential loss of the NHTSA funds.

**Explanation of Local Expenditures:** *Penalty Provisions:* Local expenditures could increase if offenders are incarcerated in local jails instead of being only fined. A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost of housing an offender in jail is reported to be \$44. There is no term of imprisonment for an infraction.

*Minimum Jail Time --* Under current law, the courts are required to sentence persons convicted of drunk driving offenses to minimum prison time if the person in question has been convicted of a previous offense.

This bill would impose a minimum jail time on a first offense as shown in the following table.

<u>Offense</u>	<b>Minimum Days of Imprisonment and Other Conditions</b>	
	<u>Current Law</u>	<u>Proposed Minimum</u>
No previous conviction and no passengers under 18 years	No mandatory amount	3 days
No previous conviction and passengers under 18 years	No mandatory amount	3 days
OWI with 1 previous conviction	5 days or 30 days community restitution	5 days <b>and</b> 30 days community restitution
OWI with 2 Previous Convictions	10 days or 60 days community restitution	<b>30</b> days or 60 days community restitution

The number of offenders who are committed to county jails for this offense is currently unknown. To illustrate how this provision might affect county operations, offenders whose licenses were suspended and had one or more prior OWI offenses was considered.

BMV reported that for the period between October 1, 2002, and September 30, 2003, 3,100 individuals received a suspended license for OWI with a prior conviction of an OWI offense.

Based on a packet search of 130 offenders committed to DOC, DOC found that 80% had two or more prior unrelated offenses.

Assuming that 20% of the persons found guilty of OWI with a single prior OWI conviction, about 620 persons could be assigned to an additional 5 days of jail (if they are already assigned to community restitution) or 30 days of community restitution (if they are already sentenced to 5 days of jail). For persons who have more than one prior OWI conviction, about 2,400 persons could be spending either an additional 20 days in jail or 60 days performing community restitution.

<b>Persons Found Guilty of Operating a Vehicle While Intoxicated With One Or More Prior OWI Convictions in CY 2002</b>	
Persons With One Prior Conviction	620
Persons With More Than One Prior Conviction	<u>2,480</u>
Total Number of Persons (based on license suspensions)	3,100
* Based on a packet search by DOC of 130 offenders, 20% had one prior conviction and the remaining 80% had more than one prior conviction.	

*Required Alcohol and Drug Abuse Assessment:* Under current law, a person convicted of an OWI offense and with a prior offense in the past five years must receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, the person must successfully complete the program. ***This bill would require any person convicted of OWI to be assessed.***

This provision would likely increase the number of persons convicted of OWI to undergo assessments by staff certified by either the Judicial Conference or the Division of Mental Health and Addiction. Under current law, judges have the discretion to order a person with no prior OWI offenses to undergo an alcohol and drug assessment, depending on the person's blood alcohol content and the person's personal history. So it is likely that courts are ordering some first-time OWI offenders to undergo alcohol and drug assessment and treatment. ***The added number of convicted persons needing to be assessed is estimated to be 8,794, based on the number of license suspensions for OWI between October 1, 2002, and September 30, 2003.***

***Certified Alcohol and Drug Programs:*** Under current law, a court must order a person who is guilty of an OWI and has a prior conviction for OWI to undergo an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to order that person to successfully complete a treatment program. Nothing is specified in the statute about which programs that a court may refer those found guilty.

As proposed, this bill would require any person found guilty of OWI with or without a prior conviction to a program certified by either the Supreme Court or the Division of Mental Health and Addiction. As of December 2003, certified court-established alcohol and drug services programs operate in 51 counties. The costs of these programs are largely covered by user fees (see *Explanation of Local Revenues*) although the county may have to absorb some of the costs for providing services for indigent offenders.

**Explanation of Local Revenues: Penalty Provisions:** Local governments could receive additional revenues from any court fees that are collected for cases that were infractions and are now misdemeanors. Court fees for both misdemeanors and felonies are \$120. Twenty-seven percent of court fees that are collected are deposited in the county general fund when a guilty verdict is entered for a misdemeanor. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. From city and town courts, the county general fund receives 20% of the court fee while the city or town general fund receives 25%.

***Certified Alcohol and Drug Programs:*** Under IC 12-23-14-16, the court may require a person to pay a fee of not more than \$400 for participation in a program.

**State Agencies Affected:** Department of Correction; Criminal Justice Institute; Department of Transportation; Bureau of Motor Vehicles.

**Local Agencies Affected:** Trial courts; local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association Jerry McCorry, Director of Drug Free/Impaired/Dangerous Driving Division of the Criminal Justice Institute, 317-232-4220; Donald McNamara, Regional Administrator of Highway Traffic Safety Administration, Chicago office, 708-503-8991; Bureau of Motor Vehicles, Indiana Judicial Center, Department of Correction.

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